IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.51890-M of 2005

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Vinod Kumar Sharma Vs. State of Haryana and others

Present : Mr. Yogesh Goel, Advocate for the petitioner.
Mr. Deepak Girotra, AAG, Haryana for respondent no.1
Mr. A.S. Sullar, Advocate for respondents no.2 to 6..

Prayer in this petition is, for quashing of the orders dated 18.11.2004 and 12.8.2005, passed by the Judicial Magistrate Ist Class, Panchkula, dismissing the application filed under Sections 311 Cr.P.C.

I have heard learned counsel for the parties and perused the impugned orders.

A perusal of the order dated 18.11.2004 reveals that the learned trial Court dismissed the application filed under Section 311 Cr.P.C., on the ground of delay.

Delay, may be a circumstance to dismiss an application filed under Section 311 Cr.P.C., but in my considered opinion, should not be the sole circumstance. Section 311 of the Cr.P.C. confers powers upon a Court, to summon, at any stage of any enquiry, trial or other proceedings, a

witness and to recall/re-examine any person already examined, if his evidence appears to the Court to be essential for a just decision of the case. The primary consideration, while adjudicating an application filed under Section 311 Cr.P.C. is whether the evidence sought to be led or the witness sought to be re-summoned/re-examined are essential for a just decision of the case. As noticed herein above, the learned trial Court, while dismissing the application, ignored this aspect of the matter.

Consequently, the order dated 18.11.2004 is set aside and the matter is remitted to the Judicial Magistrate, Ist Class, Panchkula, for a decision afresh. As a necessary consequence order dated 12.8.2005 is also set aside.

Parties are directed to appear before the trial Court on 9.10.2006 at 10 AM. The Judicial Magistrate, Ist Class, Panchkula shall decide the application under Section 311 Cr.P.C., within a fortnight of the aforementioned date. In case an opportunity is granted to lead evidence, the petitioner would be granted one opportunity only. It is made clear that the latter part of the order shall not be construed to be a direction to accept the application filed under Section 311 Cr.P.C., as no opinion has been expressed on merits.

13.9.2006 (RAJIVE BHLALLA)
GS JUDGE